

UNITED STATES BANKRUPTCY COURT

DISTRICT OF SOUTH DAKOTA

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IRVIN N. HOYT  
BANKRUPTCY JUDGE

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U.S. BANKRUPTCY COURT  
DIST. OF SOUTH DAKOTA

March 31, 1999

Marilyn Marshall Maloney, Esq.  
Counsel for Debtor  
Post Office Box 755  
Aberdeen, South Dakota 57402

Harvey A. Oliver, Jr.,  
Brown County States Attorney  
Post Office Box 114  
Aberdeen, South Dakota 57402

Subject: *In re Cameron W. Wyly,*  
Chapter 7; Bankr. No. 94-10088

Dear Counsel:

The matter before the Court is Debtor's MOTION FOR ORDER DIRECTING CLERK OF COURTS, BROWN COUNTY AUDITOR AND OTHER OFFICERS OF RECORD TO DISCHARGE JUDGMENT/LIEN DISCHARGED IN BANKRUPTCY filed March 5, 1999. This is a core proceeding under 28 U.S.C. § 157(b)(2). This letter decision and subsequent order shall constitute the Court's findings and conclusions. As set forth below, the MOTION will be denied as to the poor relief lien of \$4,500.00 held by Brown County.

First, Debtor did not seek the correct relief to have a lien removed. S.D.C.L. § 15-16-20, on which Debtor relies, applies only to the removal of judgments, not liens. [Debtor also cited 11 U.S.C. § 523 but the Court presumes that is a typo for § 524.] In contrast, a Chapter 7 debtor generally relies on 11 U.S.C. § 522(f) to have certain liens avoided. Compare Local Bankr. Rs. 4072-1 and 4073-1 and corresponding appendices.

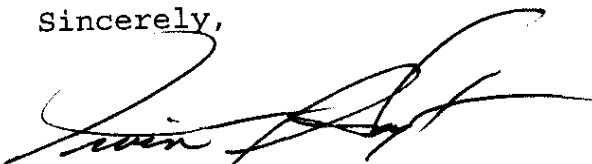
Second, the types of liens that a debtor may have avoided under § 522(f) is limited. The lien to be avoided must be on exempt property and it must not be a statutory lien, 11 U.S.C. § 522(f)(1)(A), or it must be a nonpossessory, nonpurchase money security interest in certain exempt personalty. 11 U.S.C. § 522(f)(1)(B). Here, there is no showing Brown County's poor lien fits either category. Most important, it appears that the County's lien is a pre-petition, statutory lien that cannot be removed under

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§ 522(f). *Compare In re Taylor*, Bankr. No. 89-40349, slip op. (Bankr. D.S.D. March 19, 1998); and *In re Hookie*, Bankr. No. 97-40015, slip op. (Bankr. D.S.D. April 16, 1998).

Counsel for Debtor may submit (by fax) a proposed order that removes only the judgment of AAA Auto Parts.

Sincerely,



Irvin N. Hoyt  
Bankruptcy Judge

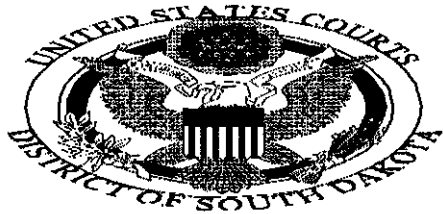
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MAR 31 1999

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U.S. Bankruptcy Court, District of South Dakota  
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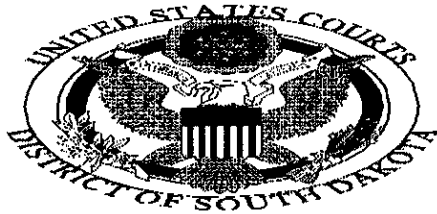
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Company : **LAW OFFICE**  
Fax Number : **8-605-229-7984**  
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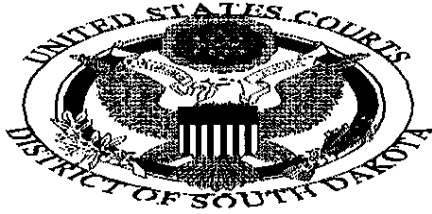
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Letter was mailed to:

Harvey A. Oliver, Jr.  
Brown County States Attorney  
PO Box 114  
Aberdeen, SD 57402

CONFIRMATION INFORMATION  
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